

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

Petition of Midwest Wireless
Communications, L.L.C. for Designation
as an Eligible Telecommunications
Carrier Under 47 U.S.C. § 214(e)(2)

PREHEARING ORDER

This matter came on for prehearing conference before Administrative Law Judge Steve M. Mihalchick on July 19, 2002, at the Office of Administrative Hearings, Minneapolis, Minnesota. The following persons appeared:

Scott J. Bergs, Leonard, Street and Deinard, Suite 2300, 150 South Fifth Street, Minneapolis, MN 55402, on behalf of Midwest Wireless Communications; L.L.C. (Midwest Wireless).

Linda S. Jensen, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, MN 55103-2106, on behalf of the Department of Commerce (the Department).

Richard J. Johnson, Moss & Barnett, PA, 4800 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402, on behalf of the Minnesota Independent Coalition (the MIC).

Kevin Saville, Associate General Counsel, Citizens Communications, 2378 Wilshire Boulevard, Mound, MN 55364, on behalf of Citizens Telecommunications Company of Minnesota, Inc., (Citizens) and Frontier Communications of Minnesota, Inc. (Frontier).

Lillian Brion, Analyst, Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, MN 55101-2147, on behalf of the staff of the Commission.

PARTIES

1. The parties to this matter as named in the Commission's Order Requiring Additional Filings, Varying Time Period and Notice and Order for Hearing of July 5, 2002, are Midwest Wireless, Citizens, Frontier, the MIC, and the Department.

2. The final date for filing Petitions to Intervene is July 26, 2002. Any persons petitioning to intervene after that date may be restricted as to the scope of their participation.

3. Any person allowed to intervene in this proceeding after the date of this Order shall be bound by the terms of this Order.

SCHEDULE

4. The following schedule is adopted:
- a) Direct testimony of Midwest Wireless—August 7, 2002.
 - b) Reply testimony of other parties—August 28, 2002.
 - c) Rebuttal testimony of Midwest Wireless—September 13, 2002.
 - d) Surrebuttal testimony of other parties—September 27, 2002.
 - e) Hearing—October 2-8, 2002, 9:00 a.m., Commission hearing rooms.
 - f) Briefs—October 28, 2002.
 - g) Reply briefs—November 5, 2002.
 - h) ALJ report—December 3, 2002.
 - i) Exceptions to report—December 13, 2002.
 - j) Replies to exceptions—December 20, 2002.^{[\[1\]](#)}

FILING OF DOCUMENTS

5. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and able to be cited by page and line number, paragraph number, or similar identifier.

6. All documents filed, including prefiled testimony, but excluding information requests and responses, shall be filed as follows:

- a) Prior to the issuance of the Report of the Administrative Law Judge, one paper copy of all documents shall be delivered or mailed to the Office of Administrative Hearings. Originals of all exhibits shall be retained by the party to be offered at the hearing.
- b) Following the Report of the Administrative Law Judge, the original of all documents shall be filed with the Executive Secretary of the Commission.
- c) Copies of all documents shall be served on the persons listed on the attached service list, in the number indicated. An electronic copy shall also be sent by email to persons whose email address is provided on the service list. The list will be revised as necessary by the Office of Administrative Hearings.

Service shall be made according to the most current service list provided to the parties by the Office of Administrative Hearings.

d) Pursuant to Minn. R. 1400.5100, subp. 9, and Minn. R. 7829.0400, subp. 1, the effective date of filing shall be the date the document is mailed to the Office of Administrative Hearings or delivered to the Executive Secretary of the Commission.

e) Proof of service shall be filed with each filed document or within three business days thereafter.

7. One copy of any document or information filed with or supplied to the Commission or the Commission staff shall be served upon every party.

DISCOVERY

8. All requests for information shall be made in writing to the person from whom the information is sought with a copy of the request mailed to all parties of record. The party responding to the information request shall provide the information requested to the requesting party within eight business days after receipt of the request. There shall be a continuing obligation to update and supplement information responses. The information need not be supplied as a matter of course to all other parties unless specifically requested by a party. Information requests received after 3:00 p.m. on business days or on weekends or State holidays shall be considered to be received on the following business day, except that any U.S. Mail received during business hours shall be considered to be received on the same day.

9. In the event the information cannot be supplied within the eight business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and to work out a schedule of compliance with the requesting party. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Notice of such a motion should be made by email if possible and may be made be heard by telephone conference among the Administrative Law Judge and affected parties.

10. Parties asked to provide "Confidential Information" may require the requesting party to comply with the terms of the Protective Agreement and Order in this matter.

11. Further discovery may be had in accordance with Minn. R. 1400.6700 - 1400.6900 insofar as those provisions do not alter the special process for this proceeding established by this Order.

PREFILED TESTIMONY AND ORDER OF TESTIMONY

12. Prefiled direct and rebuttal testimony shall be marked and received as exhibits. Prefiled testimony that is amended or that is not offered into the record shall be considered withdrawn and the sponsoring witness may not be cross-examined concerning the withdrawn testimony. Except for cause shown, all substantive revisions or corrections to any prefiled testimony shall be made in writing and served upon the Administrative Law Judge and the parties by email no later than three days prior to commencement of the evidentiary hearing.

13. Except for good cause shown, any new affirmative matter that is not offered in reply to another party's direct or rebuttal evidence shall not be offered in rebuttal or surrebuttal testimony and exhibits. However, the parties may raise in rebuttal or surrebuttal testimony affirmative matters in response to new issues that arise on cross-examination during the course of the evidentiary hearing.

14. Unless the parties agree otherwise, the order of testimony and questioning in the evidentiary hearings shall be: Midwest Wireless, non-agency parties, the Department.

EXAMINATION OF WITNESSES

15. Witnesses shall be allowed ten minutes to summarize and update their prefiled testimony. Additional time may be allowed if necessary to respond to new issues raised by other parties if no response was previously allowed.

16. Parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

17. Except for good cause shown, objections by any party relating to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party states in writing its objection with particularity to the Administrative Law Judge and serves a copy of such objections on the Commission and all other parties prior to commencement of the evidentiary hearing. If an objection is made by a party, the party shall be permitted to lay further foundation for the objection through cross-examination of the witness. Any prefiled testimony that is not objected to shall be admitted during the evidentiary hearings without the necessity of laying foundation for the testimony.

July 22, 2002

/s/ STEVE M. MIHALCHICK

STEVE M. MIHALCHICK
Administrative Law Judge

^[1] Midwest Wireless' Supplemental Filing was received by the Commission on July 16, 2002. Thus, 180-day period for the Commission to complete its review ends January 13, 2002.